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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 WESTERN DIVISION

13 UNITED STATES OF AMERICA,  
14 Plaintiff,  
15 v.  
16 SEAN DAVID MORTON, et al.,  
17 Defendants.

No. CR 2:15-00611-SVW

GOVERNMENT'S OPPOSITION TO  
DEFENDANT MELISSA MORTON'S MOTION  
FOR JUDICIAL RECOMMENDATION FOR  
LENGTH OF RRC/HALFWAY HOUSE

19 Plaintiff United States of America, by and through its counsel  
20 of record, the United States Attorney for the Central District of  
21 California and Assistant United States Attorneys James C. Hughes and  
22 Valerie L. Makarewicz, hereby files its opposition regarding  
23 defendant Melissa Morton's MOTION FOR JUDICIAL RECOMMENDATION FOR  
24 LENGTH OF RRC/HALFWAY HOUSE ("Motion") filed May 2, 2018, Docket No.  
25 309.

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**FACTS**

On September 18, 2017, the Court sentenced defendant Melissa Morton to a term of imprisonment for 24 months on each of counts 8 and 33 through 56, and 24 months on each of counts 1, 4 and 5 of the 1st Superseding Indictment, with all terms to run concurrently. Docket No. 279. Defendant is due to be released from the custody of the Bureau of Prisons on May 16, 2019. Motion, p. 1.

Defendant Melissa Morton filed the Motion requesting that the Court recommend to the Bureau of Prisons that defendant be considered for placement in a residential re-entry center for the maximum time of placement beginning with the 12 months remaining in her sentence pursuant to 18 U.S.C. § 3624(c). Motion, p. 1.

**LAW AND ARGUMENT**

When a court sentences a federal offender, the Bureau of Prisons has plenary control, subject to statutory constraints, over "the place of the prisoner's imprisonment." 18 U.S.C. § 3621(b). As annunciated by the Supreme Court, "[A] sentencing court can recommend that the BOP place an offender in a particular facility or program. . . . But decision making authority rests with the BOP." Tapia v. United States, 131 S.Ct. 2382, 2390-91 (2011); United States v. Ceballos, 671 F.3d 852, 855 (9th Cir. 2011); United States v. Dragna, 746 F.2d 457 (9th Cir. 1984). Even when sentencing courts "strongly recommend" the place of a prisoner's imprisonment, the court's recommendations "are only recommendations—and in the end they had no effect." Tapia v. United States, 131 S.Ct. at 2391. "The sentencing court may have had plans for Tapia's [defendant's] rehabilitation,

1 but it lacked power to implement them. That incapacity speaks  
2 volumes." Id.

3 Section 3621 governs the authority of the Bureau of Prisons to  
4 designate a prisoner's placement in general while in custody. In the  
5 context of community correctional facilities, also known as  
6 residential re-entry centers ("RRCs"), this section governs the  
7 Bureau of Prison's authority in cases where a prisoner who has more  
8 than a year left to serve of his or her prison sentence requests a  
9 transfer to such a facility. Sacora v. Thomas, 628 F.3d 1059, 1062  
10 (9th Cir. 2010). Any order, recommendation, or request by a  
11 sentencing court that a convicted person serve a term of imprisonment  
12 in a community corrections facility shall have no binding effect on  
13 the authority of the Bureau of Prisons to determine or change the  
14 place of imprisonment of that person. 18 U.S.C. § 3621(b).

15 Congress also charged the Bureau of Prisons with preparing  
16 prisoners for re-entry to the community during the final months of  
17 their terms of imprisonment. 18 U.S.C. § 3624(c). Pursuant to section  
18 3624(c), prisoners may be placed in a RRC or in home confinement. The  
19 Bureau of Prisons typically reviews inmate cases for pre-release  
20 placements 17 to 19 months before the projected release date. Sacora  
21 v. Thomas, 628 F.3d at 1064. The Bureau of Prisons must individually  
22 consider each inmate for pre-release placements in RRCs and this  
23 individual consideration must be based on the criteria set forth in  
24 section 3621(b). Id. The Bureau of Prisons must approach every  
25 individual inmate's assessment with the understanding that the inmate  
26 is now eligible for a maximum of 12 months pre-release RRC placement.  
27 Id. (emphasis in original).

1 Placement determination by the Bureau of Prisons is not subject  
2 to judicial review. 18 U.S.C. § 3625 (judicial review under the APA  
3 is not available to any determination, decision or order made  
4 pursuant to 18 U.S.C. §§ 3621-3624); Reeb v. Thomas, 636 F.3d 1224,  
5 1227 (9th Cir. 2011).

6 Here, under section 3624(c), defendant is requesting that the  
7 Court recommend that the Bureau of Prisons consider defendant for 12  
8 months of pre-release custody in an RRC. Motion, p. 1.

9 With respect to its merits, defendant's Motion should be denied.  
10 The Bureau of Prisons has already evaluated defendant Melissa Morton  
11 for placement in an RRC, and determined that she be placed in an RRC  
12 for a period of 91-120 days before her release. Motion, p. 7. Even  
13 if the Court were to recommend that defendant serve the last 12  
14 months of her sentence in a RRC, as requested by defendant, the  
15 decision to place defendant in such a facility rests solely with the  
16 Bureau of Prisons, as the Bureau of Prisons is able to evaluate what  
17 is appropriate and suitable for its prisoners. Even with the Bureau  
18 of Prisons granting Melissa Morton pre-release in an amount of time  
19 less than 12 months, this Court lacks jurisdiction to review the  
20 Bureau of Prisons' individualized determination of her request,  
21 however the claim is presented. 18 U.S.C. § 3625; Reeb v. Thomas, 636  
22 F.3d at 1227; Brown v. Sanders, 2011 WL 4899919, \*2 (C.D. Cal. 2011);  
23 Tekle v. Washington-Adduci, 2011 WL 4802433, \*3 (C.D. Cal. 2011);  
24 Mendoza v. Sanders, 2012 WL 601787, \*2 (C.D. Cal. 2012).

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1 **CONCLUSION**

2 The Bureau of Prisons is the appropriate and only authority that  
3 can determine where defendant Melissa Morton serves her 24 month  
4 sentence. As such, defendant's Motion should be denied.  
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6 DATED: May 9, 2018

Respectfully submitted,

7 NICOLA T. HANNA  
8 United States Attorney  
9 THOMAS D. COKER  
Assistant United States Attorney  
Chief, Tax Division

10  
11 /s/  
VALERIE L. MAKAREWICZ  
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**PROOF OF SERVICE BY MAILING**

I am over the age of 18 and not a party to the within action. I am employed by the Office of the United States Attorney, Central District of California. My business address is 300 North Los Angeles Street, Suite 7211, Los Angeles, California 90012.

On **May 9, 2018**, I served  
**GOVERNMENT'S OPPOSITION TO DEFENDANT MELISSA MORTON'S MOTION FOR JUDICIAL RECOMMENDATION FOR LENGTH OF RRC/HALFWAY HOUSE**

on each person or entity name below by enclosing a copy in an envelope addressed as shown below and placing the envelope for collection and mailing on the date and at the place shown below following our ordinary office practices. I am readily familiar with the practice of this office for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. Date of mailing: **May 9, 2018**

Place of mailing: Los Angeles, California

**See attached list**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on: **May 9, 2018**, Los Angeles, California.

\_\_\_\_\_/s/\_\_\_\_\_  
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**Barbara Le**

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2 RE: USA V. SEAN DAVID MORTON, ET AL

3 CASE NO.: 2:15-cr-00611 SVW  
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